

AMENDED IN SENATE AUGUST 31, 2012

AMENDED IN SENATE JULY 5, 2012

AMENDED IN SENATE JUNE 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 197

Introduced by Assembly Member ~~Monning~~ Buchanan

January 27, 2011

An act to ~~add Section 1698.9 to the Labor Code, relating to farm labor contractors amend Sections 20516 and 31461 of the Government Code, relating to public employees' retirement.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 197, as amended, ~~Monning Buchanan. Farm labor contractors: successors: wages and penalties. Public employees' retirement.~~

The Public Employees' Retirement Law establishes the Public Employees' Retirement System (PERS) for the purpose of providing pension benefits to specified public employees. PERS is funded by investment returns and employer and employee contributions. Existing law authorizes a contracting agency and its employees to agree in writing to share the costs of any optional benefit that is inapplicable to a contracting agency until the agency elects to be subject to the benefit.

This bill would instead authorize a contracting agency and its employees to agree in writing to share the costs of the employer contribution with or without a change in benefits, as specified. The bill would prohibit an employer from using impasse procedures to impose member cost sharing on any contribution amount above that which is authorized by law.

The County Employees Retirement Law of 1937 (CERL) authorizes counties and districts, as defined, to provide a system of retirement benefits to their employees. CERL defines compensation earnable for the purpose of calculating benefits as the average compensation for the period under consideration with respect to the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay, as determined by the retirement board.

This bill would exclude from the definition of compensation earnable any compensation determined by the board to have been paid to enhance a member's retirement benefit. The bill would also exclude various payments from the definition of compensation earnable, including payments for unused vacation, annual leave, personal leave, sick leave, and compensatory time off, as well as payments made at the termination of employment, except what may be earned and payable in each 12-month period during the final average salary period.

~~Existing law provides for the regulation and licensure of farm labor contractors by the Labor Commissioner. Under existing law, a violation of these provisions is a misdemeanor, punishable as specified.~~

~~This bill would also provide that a successor to any licensed or unlicensed farm labor contractor that owed wages or penalties to the predecessor's former employee or employees is liable for those wages or penalties if the successor meets certain criteria. Because failing to discharge the liabilities would be a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 20516 of the Government Code is
- 2 amended to read:
- 3 20516. (a) Notwithstanding any other provision of this part,
- 4 with or without a change in benefits a contracting agency and its
- 5 employees may agree, in writing, to share the costs of ~~any optional~~

benefit that is inapplicable to a contracting agency until the agency elects to be subject to the benefit. *The the employer contribution. The cost sharing pursuant to this section shall also apply for related nonrepresented employees as approved in a resolution passed by the contracting agency.*

(b) *The collective bargaining agreement shall specify the exact percentage of member compensation that shall be paid toward the current service cost of the benefits by members. The member contributions shall be normal contributions over and above normal contributions otherwise required by this part and shall be treated as normal contributions for all purposes of this part. The contributions shall be uniform, except as described in subdivision (c), with respect to all members within each of the following classifications: local miscellaneous members, local police officers, local firefighters, county peace officers, and all local safety members other than local police officers, local firefighters, and county peace officers. The balance of any costs shall be paid by the contracting agency and shall be credited to the employer's account. An employer shall not use impasse procedures to impose member cost sharing on any contribution amount above that which is authorized by law.*

~~(b) This section shall not apply to any optional benefit that is elected by a contracting agency prior to January 1, 1979.~~

(c) *Member cost sharing may differ by classification for groups of employees subject to different levels of benefits pursuant to Sections 7522.20, 7522.25, and 20475, or by a recognized collective bargaining unit if agreed to in a memorandum of understanding reached pursuant to the applicable collective bargaining laws.*

~~(e)~~

(d) This section shall not apply to any contracting agency nor to the employees of a contracting agency until the agency elects to be subject to this section by contract or by amendment to its contract made in the manner prescribed for approval of contracts. Contributions provided by this section shall be withheld from member compensation or otherwise collected when the contract amendment becomes effective.

~~(d)~~

(e) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be

1 determined on the basis of actuarial assumptions and methods that,
2 in the aggregate, are reasonable and which, in combination, offer
3 the actuary's best estimate of anticipated experience under this
4 system.

5 ~~(e) The additional employer contributions required under this~~
6 ~~section shall be computed as a level percentage of member~~
7 ~~compensation. The additional contribution rate required at the time~~
8 ~~this section is added to a contract shall not be less than the sum of~~
9 ~~(1) the actuarial normal cost, plus (2) the additional contribution~~
10 ~~required to amortize the increase in accrued liability attributable~~
11 ~~to benefits elected under this section over a period of not more~~
12 ~~than 30 years from the date this section becomes effective in the~~
13 ~~public agency's contract.~~

14 (f) Nothing in this section shall preclude a contracting agency
15 and its employees from independently agreeing in a memorandum
16 of understanding to share the costs of any optional benefit or when
17 initially entering into a contract, any benefit, in a manner
18 inconsistent with this section. However, any agreement in a
19 memorandum of understanding that is inconsistent with this section
20 shall not be part of the contract between this system and the
21 contracting agency.

22 (g) *If, and to the extent that, the board determines that a*
23 *cost-sharing agreement under this section would conflict with Title*
24 *26 of the United States Code, the board may refuse to approve the*
25 *agreement.*

26 (h) *Nothing in this section shall require a contracting agency*
27 *to enter into a memorandum of understanding or collective*
28 *bargaining agreement with a bargaining representative in order*
29 *to increase the amount of member contributions when such a*
30 *member contribution increase is authorized by other provisions*
31 *under this part.*

32 *SEC. 2. Section 31461 of the Government Code is amended to*
33 *read:*

34 31461. (a) "Compensation earnable" by a member means the
35 average compensation as determined by the board, for the period
36 under consideration upon the basis of the average number of days
37 ordinarily worked by persons in the same grade or class of positions
38 during the period, and at the same rate of pay. The computation
39 for any absence shall be based on the compensation of the position
40 held by the member at the beginning of the absence. Compensation,

as defined in Section 31460, that has been deferred shall be deemed “compensation earnable” when earned, rather than when paid.

(b) “Compensation earnable” does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid to enhance a member’s retirement benefit under that system.

That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member’s grade or class.

(C) Any payment that is made solely due to the termination of the member’s employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

(c) The terms of subdivision (b) are intended to be consistent with and not in conflict with the holdings in *Salus v. San Diego County Employees Retirement Association* (2004) 117 Cal.App.4th 734 and *In re Retirement Cases* (2003) 110 Cal.App.4th 426.

~~SECTION 1. Section 1698.9 is added to the Labor Code, to read:~~

~~1698.9. A successor to any licensed or unlicensed farm labor contractor that owed wages or penalties to the predecessor’s former~~

1 ~~employee or employees is liable for those wages or penalties if~~
2 ~~the successor meets any of the following criteria:~~

3 ~~(a) Uses substantially the same facilities or workforce to offer~~
4 ~~substantially the same services as the predecessor employer.~~

5 ~~(b) Shares in the ownership, management, control of the~~
6 ~~workforce, or interrelations of business operations with the~~
7 ~~predecessor employer.~~

8 ~~(c) Employs in a managerial capacity any person who directly~~
9 ~~or indirectly controlled the wages, hours, or working conditions~~
10 ~~of the employees owed wages or penalties by the predecessor~~
11 ~~employer.~~

12 ~~(d) Is an immediate family member of any owner, partner,~~
13 ~~officer, licensee, or director of the predecessor employer or of any~~
14 ~~person who had a financial interest in the predecessor employer.~~
15 ~~For purposes of this section, “immediate family member” means~~
16 ~~spouse, father, mother, brother, sister, son, daughter, uncle, aunt,~~
17 ~~nephew, niece, or grandparent.~~

18 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
19 ~~Section 6 of Article XIII B of the California Constitution because~~
20 ~~the only costs that may be incurred by a local agency or school~~
21 ~~district will be incurred because this act creates a new crime or~~
22 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
23 ~~for a crime or infraction, within the meaning of Section 17556 of~~
24 ~~the Government Code, or changes the definition of a crime within~~
25 ~~the meaning of Section 6 of Article XIII B of the California~~
26 ~~Constitution.~~